IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

Crl.Rev.Pet.No. 3061 of 2007()

AGAINST THE ORDER DATED 16/03/2007 IN CRL.MP 435/2007 IN CRLRP.9/2007 of SESSIONS COURT, ERNAKULAM
CC.447/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

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REVN. PETITIONER: PETITIONER

M.A.K.AGRO COMMODITIES TRADING
COMPANY(P) LTD., REPRESENTED BY ITS MANAGING
DIRECTOR, M.A.K. AZAD, AGED 53, S/O MUHAMMED GHANI
G-211, MAIN AVENUE ROAD, PANAMPILLY NAGAR,
COCHIN-682036.

BY ADV. SRI.K.RAMAKUMAR
SMT.SMITHA GEORGE

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. M/S RABIA SEA FOODS, 20/550,
NAMBIAPURAM ROAD, PALLURUTHY,
KOCHI-6.

3. K.A.HASHMIN, AGED 29, PROPRIETOR,
M/S RABIA SEA FOODS, 20/550,
NAMBIAPURAM ROAD, PALLURUTHY, KOCHI-6.

4. K.K.ASHRAF, AGED 59, MANAGER,
M/S. RABIA SEA FOODS, 20/550,
NAMBIAPURAM ROAD, PALLURUTHY, KOCHI-6.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR
SRI.KKM.SHERIF, SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH, SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 3061 of 2007

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Dated: 15th October 2007

ORDER

The revision petitioner is the complainant in C.C. 447 of 2003 on the file of the J.F.C.M-I, Ernakulam . As per the private complaint filed before the said court the revision petitioner wanted to prosecute the three accused persons for offences punishable under Sections 409 and 420 read with Sec. 34 I.P.C. The said private complaint was filed on 7-5-2003. Evidence on the private complaint was adduced on 2-6-2005. On 30-09-2005, the Magistrate took cognizance only of the offence punishable under Sec. 406 read with Sec. 34 I.P.C. The trial of the case then proceeded further. On 15-09-2006, the revision petitioner filed a petition under Sec. 311 Cr.P.c. to reopen the evidence by filing a list of witnesses. That application was dismissed by the trial court. Aggrieved by the dismissal, the revision petitioner filed Crl.M.C. 3778 of 2006 before this Court. This court dismissed the M.C. and directed the disposal of the case itself within four months of the receipt of the order. Thereafter, the revision petitioner filed Crl.R.P. 9 of 2007 before the Sessions court, Ernakulam to revise the order dated 30-09-2007 passed by the trial court framing charge alleging that the court should have framed a charge under Sec. 420 I.P.C. as well. Since the revision was not filed within time, the petitioner filed Crl.M.P. No.435 of 2007 to condone the delay of 381 days in filing the above revision. As per the impugned order dated 16-3-2007 the Sessions Court dismissed the Crl.M.P. holding that the revision petitioner had not explained the inordinate delay properly. It

is the said order which assailed in this revision.

Apart from the fact that the remedy of the revision petitioner is to assail the final order passed in Crl.R.P. 9 of 2007 which must have been dismissed as time barred in view of the dismissal of Crl.M.P. 435 of 2007, the revision petitioner cannot claim ignorance of the order dated 30-09-2005 passed by the trial court which had taken cognizance only of the offence punishable under Sec. 406 read with Sec. 34 I.P.C. On 30-09-2005 itself he should have felt aggrieved by the refusal on the part of the trial court in not taking cognizance of the offences punishable under Sections 409 and 420 I.P.C. For that reason also, I see no ground to interfere with the order passed by the Sessions Court.

This Revision is accordingly dismissed as not maintainable

V. RAMKUMAR,
(JUDGE)

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